IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2006

Coram

The Honourable Mr. JUSTICE K.MOHAN RAM

Civil Miscellaneous Appeal No.507 of 1999
& C.M.P.No.19424 of 2005

The New India Assurance Co. Ltd.,
Perundurai, Erode .... Appellant/3rd respondent

Vs.

1. Tamilselvi
2. Minor. Maheswari
3. Minor. Krishnaraj
(Minors rep. by their mother and
next friend Tamilselvi). .... Respondents/Petitioner 1 to 3

4. Perumal
5. S.S.Subramaniam .... Respondent/Ist respondent
Respondents/IInd respondent

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the judgement and decree dated 17.12.1998 made in MACT O.P.No.147 of 1996 on the file of Motor Accidents Claims Tribunal (Sub-Judge), Bhavani.

For Appellant : Mr. M.Krishnamoorthy
For Respondents: Mr. B.Kumarasamy, for R-1 to R-3.
Mr. S.Sathish Rajan, for
M/s. R.Swaminathan, for R-4.
Ms. D.Kamatchi, for M/s. T.P.Manoharan, for R-5.

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J U D G M E N T

Being aggrieved by the award dated 17.12.1998 made in MACT O.P.No.147 of 1996 on the file of Motor Accidents Claims Tribunal (Sub-Judge), Bhavani awarding a compensation of Rs.2,11,000/- and directing the same to be paid by the appellant/insurer to respondents 1 to 3 / claimants, the insurer has filed the above appeal.

2. The short facts which are necessary for the disposal of the case are set out below:

(i) The van bearing Registration No.TN36 5947 was owned by the fifth respondent herein and while the same was being driven by the fourth respondent-driver, it met with an accident at 8.00 am on 31.12.1994. In the said vehicle, Matheswaran-the husband of the

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first respondent and the father of respondents 2 and 3 were travelling. According to the claimants, since the vehicle was being driven rashly and negligently by the fourth respondent herein, he lost control of the van and it turned upside down. In the said accident, Matheswaran sustained severe injuries and ultimately succumbed to the injuries and died in the hospital on 09.01.1995. At the time of the accident, Matheswaran was aged about 30 years and he was working as a driver earning Rs.3,000/- per month and Rs.2,000/- per year as bonus. At the time of accident, the first respondent was about 25 years and respondents 2 and 3 were young children. Under various heads, a total sum of Rupees five lakhs was claimed as compensation.

(ii) The driver of the vehicle, the fourth respondent herein, filed a counter statement contending that at the time of accident the van involved in the accident was driven by the deceased Matheswaran and the fourth respondent was only travelling as a passenger and the accident was solely due to the negligence on the part of Matheswaran. It is further contended that on 07.02.1995 before the Panchayatdhars the claimants were paid a considerable amount by the owner of the vehicle-the fifth respondent herein, and having kept quite for a long time the claim petition has been filed and on the said pleadings he prayed for the dismissal of the claim Petition.

(iii) The owner of the vehicle-the fifth respondent herein, filed a separate counter statement contending that the vehicle in question was insured with the appellant herein; the deceased Matheswaran was working as a driver under the fifth respondent; on the date of accident he was driving the vehicle but he had allowed the fourth respondent to drive the vehicle and as such when Matheswaran had without the permission of the owner permitted the fourth respondent to drive the vehicle, the owner is not liable to pay any compensation to the claimants. It is further contended that on humanitarian basis a sum of Rs.25,000/- was paid by him to the claimants and on the said pleadings he prayed for the dismissal of the claim petition.

(iv) The insurer/appellant herein has filed a separate counter statement contending that the claimants were not depending upon the deceased Matheswaran. A specific stand has been taken that the deceased Matheswaran was not having a valid driving licence and hence the fourth respondent has been impleaded in the claim petition as the first respondent describing him as the driver of the vehicle. It is further contended that it is the duty of the claimants to prove that the vehicle was not used contrary to the terms and conditions of the insurance policy.

3. Before the Tribunal, on the side of claimants, the first respondent herein was examined as P.W.1 and one Nagarajan was examined as P.W.2 and Exs.P-1 to P-10 have been marked. On the side of Insurer, one A.S.Sridharan, Assistant of the Insurance Company, was examined as R.W.1 and the owner of the Van-fifth respondent herein, was examined as R.W.2. The Tribunal on a careful

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consideration of the oral and documentary evidence adduced in the case held that the deceased Matheswaran was not the driver of the Van and he was only a passenger in the Van and the vehicle was being driven by the fourth respondent herein and by relying upon the decisions reported in A.I.R. 1987 SC 1184 and A.I.R. 1996 S.C.2054, fastened the liability on the Insurer. The Tribunal awarded a total sum of Rs.2,11,000/- and held that respondents 4 and 5 herein and the appellant are jointly and severally liable to pay the award amount.

4. The learned counsel for the appellant, at the outset, submitted that the appellant is questioning only its liability to pay the award amount on the ground that the deceased Matheswaran was only a passenger in the van, which was involved in the accident and as such the Insurer is not liable to pay the award amount. In support of the said contention he relied upon the case of National Insurance Company Ltd., Vs. Bommithi Subbhayamma and others, reported in (2005 (1) C.T.C. 706 (S.C.) and New India Assurance Co. Ltd., Vs. Asha Rani and Others, reported in 2003 (2) SCC 223, which was followed in 2005 (1) C.T.C. 706 (S.C). In 2003 (2) SCC 223, in paragraph 26, it has been held as follows:

> "26. In view of the changes in the relevant provisions in the 1998 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor".

5. For the above said legal submissions made by the learned counsel for the appellant, the learned counsel for the respondents have no answer. Therefore, the contention of the learned counsel for the appellant has to be accepted.

6. But, however the learned counsel for the fifth respondent-owner of the Van vehemently contended that deceased Matheswaran was the paid driver of the owner and S.P.Perumal-the fourth respondent herein was not his paid driver. But unfortunately no documentary evidence has been produced to establish that plea. In fact in Ex.B-2 the Claim Form submitted by the fifth respondent-owner in column-3 S.P.Perumal-the fourth respondent herein has been shown as the driver of the van in question. Having made such a claim before the Insurance Company, it is not open to the fifth respondent to take a different stand. In the First Information Report given by Thangaraj, which has been marked as Ex.P-1, also it is not stated that Matheswaran was the driver of the van. This aspect also has been considered by the Tribunal and only on a consideration of the above said facts the Tribunal negatived the contention of the owner that Matheswaran was the paid driver of the owner at the time of

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accident. Therefore, the contention of the learned counsel for the fifth respondent cannot be accepted.

7. The learned counsel for respondents 1 to 3 submitted that even if the Insurer is exonerated, it should be directed to pay the award amount to the claimants and thereafter directed to recover the same from the owner of the vehicle. In support of the said contention, the learned counsel relied upon the case of United India Insurance Company Limited Vs. P.Jaya and others reported in 2006 (1) C.T.C. 173 (Division Bench) and one unreported judgement dated 17.06.2006 in the case of R.Krishnan and Gopala Krishnan and two others delivered in C.M.A.No.829 of 1998.

8. The Honourable Supreme Court in the case of National Insurance Company Limited Vs. Challa Bharathamma and Others reported in 2004 (8) S.C.C. 517 in paragraph 13 has laid down as follows:-

> "Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing Court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing Court shall take assistance of the Regional Transport Authority concerned. The executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

9. Therefore though the Insurance Company is not liable to pay the award amount legally in view of the above said judgement of the Honourable Supreme Court of India, the following directions are issued:-

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"The appellant shall satisfy the award for the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing Court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle/the fifth respondent herein, shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing Court shall take assistance of the Regional Transport Authority concerned. The executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle / the fifth respondent herein".

10. With the above directions, the appeal is disposed of. No costs. Consequently, the connected CMP is also closed.

srk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Motor Accidents Claims Tribunal,
(Subordinate Judge) Bhavani.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+ 1 cc to Mr. B. Kumarasamy, Advocate SR No. 35063
+ 1 cc to Mr. R. Swaminathan, Advocate SR No. 34620
+ 1 cc to Mr. Krishnamoorty, Advocate SR no. 34677

NTK(CO)
SR/31.10.2006

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